

JUN 5 1968

JOHN F. DAVIS, CLERK

**In the Supreme Court of the
United States**

October Term, 1968No. ~~50~~ 51

UNITED STATES OF AMERICA,*Appellant*

vs.

JOSEPH FRANCIS NARDELLO and
ISADORE WEISBERG

*On Appeal from the United States District Court
for the Eastern District of Pennsylvania.*

MOTION TO DISMISS OR AFFIRM

F. EMMETT FITZPATRICK, JR.,
Room 1505, 12 S. 12th St.,
Philadelphia, Pa. 19107,
CHARLES A. PERUTO,
202 N. Broad Street,
Philadelphia, Pa. 19102,
Attorneys for Appellees.

INDEX

	PAGE
Motion To Dismiss or Affirm	1

TABLE OF CITATIONS

STATUTES:

18 PS 4318	2
18 PS 4802, 4803	2
18 U.S.C. §1952	2

TEXT:

31 Am. Jur. 2d 900	2
--------------------------	---

IN THE SUPREME COURT OF THE
UNITED STATES

—
No. 1277
—

United States of America, **Appellant**

v.

Joseph Francis Nardello and Isadore Weisberg

—
*On Appeal From the United States District Court for the
Eastern District of Pennsylvania*
—

MOTION TO DISMISS OR AFFIRM
—

Appellees move the Court to dismiss the appeal herein on the grounds hereinafter set forth, or to affirm the judgment sought to be reviewed on the appeal on the ground that it is manifest that the questions on which the decisions of this cause depends are so unsubstantial as not to need further argument.

1. Pennsylvania, by statute, makes a clear distinction between extortion and blackmail.

Under the common law, extortion is defined as the unlawful taking by any officer, of any money or thing of

Motion

value that is not due to him, or the taking of more than is due, or the taking of money before it is due. 31 *Am. Jur.* 2d 900. The statutes which now chiefly govern this crime in the various jurisdictions are substantially declaratory of this common-law definition.

Pennsylvania has, by statute, adopted a definition of extortion which is in accord with the common-law concept of extortion.

18 P.S. 4318. Pennsylvania has also adopted statutes which prohibit the crime of blackmail, 18 P.S. 4802 and 4803. A careful reading of these sections shows that Pennsylvania has adopted the common-law distinction of these crimes.

It is true that the crime of extortion may be committed by a private individual in jurisdictions where the common-law definition of the offense has been enlarged by statute to include what is termed "blackmail." Pennsylvania, however, has maintained the common-law distinction between these crimes. It is an accepted rule of construction that any statute which is in derogation of the common-law should be strictly construed; this is particularly true of criminal statutes.

Defendants were indicted and charged with violations of 18 U.S.C. §1952. Sec. 1952 specifically refers to state law as defining the offense of "extortion." Under the law of Pennsylvania, the defendants could never have been convicted of extortion. Nor could they have been convicted of any other offense enumerated in the section.

The Government seems to contend that this distinction is a mere technicality. That this is not so can be seen

Motion

3

by the vast difference between the penalties for the two crimes.

Wherefore, appellees pray the Court to dismiss the appeal herein, or to affirm the judgment sought to be reviewed.

F. EMMETT FITZPATRICK, JR.,
A. CHARLES PERUTO,
Attorneys for Appellees.